

AMENDED IN ASSEMBLY MAY 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1605

Introduced by Assembly Members Wolk and Berg

(Principal coauthor: Assembly Member Evans)

(Principal coauthors: Senators Alquist and Simitian)

(~~Coauthor: Assembly Member Pavley~~ Coauthors: Assembly Members Cohn, Goldberg, Hancock, Lieber, Mullin, and Pavley)

(~~Coauthor: Senator Scott~~ Coauthors: Senators Kuehl, Romero, and Scott)

February 22, 2005

An act to amend Sections 15634 and 15655.5 of, and to add Section 15630.1 to, the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1605, as amended, Wolk. Elder and dependent adult abuse.

Existing law, the Elder Abuse and Dependent Adult Civil Protection Act, establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. These procedures require persons, defined as mandated reporters, to report known or suspected instances of elder or dependent adult abuse. Under existing law, care custodians of elder or dependent adults and local law enforcement agencies are mandated reporters. A violation of the reporting requirements by a mandated reporter is a misdemeanor.

This bill would include within these reporting requirements mandated reporters of suspected financial abuse, as defined, and would, with certain exceptions, make the related misdemeanor provisions applicable to mandated reporters of suspected financial

elder *or dependent adult* abuse, as defined, thereby imposing a state-mandated local program by changing the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 15630.1 is added to the Welfare and
2 Institutions Code, to read:
3 15630.1. (a) As used in this section “mandated reporter of
4 suspected financial elder *or dependent adult* abuse” includes all
5 officers and employees of financial institutions.
6 (b) As used in this section the term “financial institution”
7 means any of the following:
8 (1) A depository institution, as defined in Section 3(c) of the
9 Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).
10 (2) An institution-affiliated party, as defined in Section 3(u) of
11 the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).
12 (3) A federal credit union or state credit union, as defined in
13 Section 101 of the Federal Credit Union Act (12 U.S.C. Sec.
14 1752), including, but not limited to, an institution-affiliated party
15 of a credit union, as defined in Section 206(r) of the Federal
16 Credit Union Act (12 U.S.C. Sec. 1786(r)).
17 (c) Any mandated reporter of suspected financial elder *or*
18 *dependent adult* abuse who has direct contact with the elder *or*
19 *dependent adult* or who reviews or approves the elder’s *or*
20 *dependent adult’s* financial documents, records, or transactions,
21 in connection with providing financial services with respect to an
22 elder or dependent adult, and who, within the scope of his or her
23 employment and professional practice, has observed or has
24 knowledge of an incident, that is directly related to the
25 transaction or matter that is within that scope of practice, that
26 reasonably appears to be financial abuse, or reasonably suspects
27 that abuse, shall report the known or suspected instance of

1 financial abuse by telephone immediately, or as soon as
2 practicably possible, and by written report sent within two
3 working days to the local adult protective services agency or the
4 local law enforcement agency.

5 (d) An allegation by the elder *or dependent adult*, or any other
6 person, that financial abuse has occurred is not sufficient to
7 trigger the reporting requirement under this section if both of the
8 following conditions are met:

9 (1) The mandated reporter of suspected financial elder *or*
10 *dependent adult* abuse is aware of no other corroborating or
11 independent evidence of the alleged elder *or dependent adult*
12 abuse. The mandated reporter of suspected financial elder *or*
13 *dependent adult* abuse is not required to investigate any
14 accusations.

15 (2) In the exercise of his or her professional judgment, the
16 mandated reporter of suspected financial elder *or dependent*
17 *adult* abuse reasonably believes that financial elder *or dependent*
18 *adult* abuse did not occur.

19 ~~(e) Failure to report financial abuse under A mandated~~
20 ~~reporter of suspected elder or dependent adult financial abuse~~
21 ~~who has knowledge or reasonably suspects that financial elder or~~
22 ~~dependent adult abuse has occurred, and who willfully fails to~~
23 ~~report that abuse or suspected abuse as required by~~ this section
24 shall be subject to subdivision (h) of Section 15630.

25 (f) A person employed as a teller in an institution described in
26 paragraphs (1) and (2) of subdivision (a) shall not be subject to
27 subdivision (h) of Section 15630 during the first six months of
28 his or her employment, if the person has not received training or
29 instructional materials regarding the duties imposed by this
30 article including, but not limited to, identification and reporting
31 of financial elder *or dependent adult* abuse.

32 SEC. 2. Section 15634 of the Welfare and Institutions Code is
33 amended to read:

34 15634. (a) No care custodian, clergy member, health
35 practitioner, mandated reporter of suspected financial elder *or*
36 *dependent adult* abuse, or employee of an adult protective
37 services agency or a local law enforcement agency who reports a
38 known or suspected instance of elder or dependent adult abuse
39 shall be civilly or criminally liable for any report required or
40 authorized by this article. Any other person reporting a known or

1 suspected instance of elder or dependent adult abuse shall not
2 incur civil or criminal liability as a result of any report authorized
3 by this article, unless it can be proven that a false report was
4 made and the person knew that the report was false. No person
5 required to make a report pursuant to this article, or any person
6 taking photographs at his or her discretion, shall incur any civil
7 or criminal liability for taking photographs of a suspected victim
8 of elder or dependent adult abuse or causing photographs to be
9 taken of such a suspected victim or for disseminating the
10 photographs with the reports required by this article. However,
11 this section shall not be construed to grant immunity from this
12 liability with respect to any other use of the photographs.

13 (b) No care custodian, clergy member, health practitioner,
14 mandated reporter of suspected financial elder *or dependent*
15 *adult* abuse, or employee of an adult protective services agency
16 or a local law enforcement agency who, pursuant to a request
17 from an adult protective services agency or a local law
18 enforcement agency investigating a report of known or suspected
19 elder or dependent adult abuse, provides the requesting agency
20 with access to the victim of a known or suspected instance of
21 elder or dependent adult abuse, shall incur civil or criminal
22 liability as a result of providing that access.

23 (c) The Legislature finds that, even though it has provided
24 immunity from liability to persons required to report elder or
25 dependent adult abuse, immunity does not eliminate the
26 possibility that actions may be brought against those persons
27 based upon required reports of abuse. In order to further limit the
28 financial hardship that those persons may incur as a result of
29 fulfilling their legal responsibilities, it is necessary that they not
30 be unfairly burdened by legal fees incurred in defending those
31 actions. Therefore, a care custodian, clergy member, health
32 practitioner, mandated reporter of suspected financial elder *or*
33 *dependent adult* abuse, or an employee of an adult protective
34 services agency or a local law enforcement agency may present
35 to the State Board of Control a claim for reasonable attorneys'
36 fees incurred in any action against that person on the basis of
37 making a report required or authorized by this article if the court
38 has dismissed the action upon a demurrer or motion for summary
39 judgment made by that person, or if he or she prevails in the
40 action. The State Board of Control shall allow that claim if the

1 requirements of this subdivision are met, and the claim shall be
2 paid from an appropriation to be made for that purpose.
3 Attorneys' fees awarded pursuant to this section shall not exceed
4 an hourly rate greater than the rate charged by the Attorney
5 General at the time the award is made and shall not exceed an
6 aggregate amount of fifty thousand dollars (\$50,000). This
7 subdivision shall not apply if a public entity has provided for the
8 defense of the action pursuant to Section 995 of the Government
9 Code.

10 SEC. 3. Section 15655.5 of the Welfare and Institutions Code
11 is amended to read:

12 15655.5. A county adult protective services agency shall
13 provide the organizations listed in ~~paragraphs~~ *subdivisions* (v),
14 (w), and (x) of Section 15610.17, and mandated reporters of
15 suspected financial elder *or dependent adult* abuse pursuant to
16 Section 15630.1, with instructional materials regarding elder and
17 dependent adult abuse and neglect and their obligation to report
18 under this chapter. At a minimum, the instructional materials
19 shall include the following:

20 (a) An explanation of elder and dependent adult abuse and
21 neglect, as defined in this chapter.

22 (b) Information on how to recognize potential elder and
23 dependent adult abuse and neglect.

24 (c) Information on how the county adult protective services
25 agency investigates reports of known or suspected abuse and
26 neglect.

27 (d) Instructions on how to report known or suspected incidents
28 of abuse and neglect, including the appropriate telephone
29 numbers to call and what types of information would assist the
30 county adult protective services agency with its investigation of
31 the report.

32 SEC. 4. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the
37 penalty for a crime or infraction, within the meaning of Section
38 17556 of the Government Code, or changes the definition of a

- 1 crime within the meaning of Section 6 of Article XIII B of the
- 2 California Constitution.

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